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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,174	12/04/2003	Douglas Andrew Levin	DUC-001	6697
51414 7590 01/25/2008 GOODWIN PROCTER LLP PATENT ADMINISTRATOR EXCHANGE PLACE BOSTON, MA 02109-2881			EXAMINER HEWITT II, CALVIN L	
			ART UNIT 3600	PAPER NUMBER
			MAIL DATE 01/25/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/728,174

Applicant(s)

LEVIN ET AL.

Examiner

Calvin L. Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 07 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-4-03, 11-23-05, 5-5-06</u> . | 6) <input type="checkbox"/> Other: _____  |

***Status of Claims***

1. Claims 1-28 have been examined.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5-13, and 21-27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ginter et al., U.S. Patent No. 5,892,900.

As per claims 1, 2, 5-13, and 21-27, Ginter et al. teach a method comprising:

- identifying a first license associated with content (figures 17-21; column 137, lines 23-35; column/line 139/65-140/10; column 140/62-141/3; column/line 155/38-156/28)
- providing and storing license attributes (e.g. associated with a software code format, annotation or naming convention, text description, a

- standards body) (figures 4- "types of usage" and 17-21; column 9, lines 21-25; column/line 155/38-156/28; column/line 156/48-157/32; column 160, lines 10-33; column 166, lines 25-30; column/line 286/65-287/45)
- assigning and storing a restriction value (figure 4- "types of usage"; column 9, lines 21-25; column/line 155/38-156/28; column/line 156/48-157/32; column 160, lines 10-33), use (e.g. distribute) value (column 9, lines 21-25; column 157, lines 1-20) and an interaction value (e.g. manipulation) (column 9, lines 21-25; column/line 286/65-287/45; column/line 322/30-325/22; column/line 325/45-326/48)
  - comparing license attributes of a first content with the license assigned and stored attributes of a second (column 9, lines 21-25; column 59, lines 39-55; column/line 286/65-287/45; column/line 322/30-325/22; column/line 325/45-326/48)
  - first and second content corresponding to different software elements (column 59, lines 39-55; column 141, lines 5-25; column/line 285/65-286/30; column/line 321/62-323/10; column/line 324/45-325/22; column/line 325/45-326/5)
  - restriction values that correspond to a prohibition, requirement, text, required, true, false...etc. (figure 4- "types of usage"; column 9, lines 21-25; column/line 155/38-156/28; column/line 156/48-157/32; column 160, lines 10-33)

Art Unit: 3621

- assigned use values such as limited distribution (column 327, lines 10-52)
- interaction values that included at least one of an original element, a modified element, a group of distinct elements, a group of interconnected elements, a group of elements capable of providing a desired functionality, a plurality of interoperable groups of elements capable of providing a plurality of functions, an unrestricted manipulation of elements, and an unrestricted ownership of elements of at least one aspect of the first protectable content (column 9, lines 21-25; column/line 286/65-287/45; column/line 322/30-325/22; column/line 325/45-326/48)
- analyzing first content to identify a first license (column 58, lines 23-48)
- default assigned (e.g. use, interaction, and restriction) values and overriding the assigned values (column/line 285/65-286/30)
- detecting event information associated with at least one of an error, a warning, and a conflict generated during the comparison, the event information including indicia pertaining to at least one of all event type, a frequency of occurrence of the event type, a related use value, a related interaction value, and an identifier associated with at least one of the first license and second license and storing the event information in a data structure (column 317, lines 42-65; column 318, lines 30-58)

Regarding the determination of attributes of a third content based on aspects of the first and second content, Ginter et al. teach a "chain of control" (figures 79-83; column/line 278/40-280/8; column 286, lines 15-20) where a first user establishes "rights" (figure 4- "types of usage"; column 9, lines 21-25; column/line 155/38-156/28; column/line 156/48-157/32; column 160, lines 10-33) which allows a second user to modify first user created content (column/line 286/65-287/45). Further, as content is passed along a distribution network (figures 79-83) use of the content is determined by rights added by subsequent users (column 59, lines 39-55; column/line 285/65-286/30; column/line 321/62-323/10; column/line 324/45-325/22; column/line 325/45-326/5), hence, Ginter et al. necessarily teach determining the attributes of a third (fourth, fifth... etc.) content based on aspects of the first and second (previous) content.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al., U.S. Patent No. 5,892,900.

As per claims 3-4, Ginter et al. apply their teaching to licensing content such as software (column 141, lines 5-25). Therefore, as "open source" software is also software, Ginter et al. at least teach, if not necessarily disclose software that is open source compliant.

6. Claims 14-20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al., U.S. Patent No. 5,892,900 in view of Erickson, U.S. Patent No. 5,765,152.

As per claims 14-20 and 28, Ginter et al. teach a "chain of control" (figures 79-83; column/line 278/40-280/8; column 286, lines 15-20) where a first user establishes "rights" (figure 4- "types of usage"; column 9, lines 21-25; column/line 155/38-156/28; column/line 156/48-157/32; column 160, lines 10-33) and allows for second and subsequent users to modify first user created content in line with those rights (column/line 286/65-287/45). Further, as the modified content is passed along a distribution network (figures 79-83) the modified content can also be modified based on added rights associated with the modifications of subsequent users (column 59, lines 39-55; column/line 285/65-286/30; column/line 321/62-323/10; column/line 324/45-325/22; column/line 325/45-326/5). Ginter et al. also teach presenting to a potential user, residual rights required for using content (column 263, lines 26-39) and storing the residual rights in a network accessible location (column 264, lines 28-42). Ginter et al. do

not specifically presenting licensing alternatives. Erickson teaches presenting to a user licensing alternatives for content (figures 7e-f; column 11, lines 2-13; column 21, lines 25-31; column 22, lines 4-22) wherein the licensing alternatives are derived from previous modifications to the content (figures 7e-f; column 11, lines 2-13; column/line 11/65-12/15; column 19, lines 51-67; column 20, lines 51-67; column 22, lines 4-12). Erickson also stores license alternatives in network accessible location (figure 6, items 103 and 104; column/line 18/24-20/16) and assigning at least one source value to each of the attributes associated with the subsequently (e.g. third) modified content, the source values identifying attribute information associated with previous (e.g. at least one of first and second) licenses that affected values associated with particular ones of the attributes of the subsequently (e.g. third) modified content (figures 7e-f; column/line 11/65-12/15; column 17, lines 14-24; column 21, lines 25-31). Therefore, it would have been obvious to combine the teachings of Ginter et al. and Erickson in order to allow users to more efficiently browse and select rights for content ('900, figure 72D- "property info", column 263, lines 32-37, column 264, lines 28-34; '152, figures 7B-F).

### ***Conclusion***



Art Unit: 3621

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Tardo et al. teach downloading license alternatives to a licensee computer

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

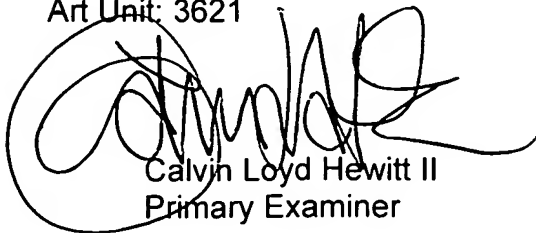
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer, can be reached at (571) 272-6779.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/728,174

Page 9

Art Unit: 3621

A handwritten signature in black ink, appearing to read "Calvin Hewitt II", is written over a large, circular, stylized mark that resembles a "C" or a large "O".

Calvin Loyd Hewitt II  
Primary Examiner

January 21, 2008